

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Business Meeting
December 11, 2006
Department of Environmental Quality
Metcalf Building Room 111, 1520 East 6th Avenue
Helena, MT

All Board members were in attendance. They are Theresa Blazicevich, Frank Boucher, Greg Cross, Adele Michels, Steve Michels, Roger Noble, and Shaun Peterson. Also in attendance were Terry Wadsworth, Executive Director, and Paul Johnson, Board attorney.

Presiding Officer Cross called the meeting to order at 10:04 a.m.

Approval of Minutes

Mr. Peterson moved to accept the minutes of the October 16, 2006 Board meeting. Mr. Boucher seconded. **The motion was unanimously approved.**

Eligibility – Big Sky Wood Crafters, Fac ID #60-15045, Release #4511, Laurel

Mr. Wadsworth presented a summary of the staff's recommendation to deny the eligibility of the release because the owner, the Montana Department of Transportation (MDT), failed to request a closure permit within 30 days of discovery of the first discovered tank. While removing the "found" tank, a second tank was discovered. It is not clear from which tank the release occurred. The second tank would be eligible, while the first tank is being recommended ineligible. The release was a gasoline release.

Pat Driscoll, MDT, stated that the original 1000-gal "found" tank was described as a heating oil tank, with the second, a 500-gal tank, was described as a gasoline tank. There was small a 15-gallon hydraulic sump tank.

Ms. Blazicevich **moved** to reject the staff recommendation. One of the tanks is eligible, the release was a gasoline release, and it is not clear and cannot be determined from which tank the release came. The release could have come from the eligible gasoline tank, and the owner/operator should be given the benefit of the doubt.

In response to a question from Mr. Peterson, Mr. Wadsworth stated that there was no additional environmental damage as a result of the delay in request for a closure permit.

Mr. Cross asked for the Board attorney's evaluation of the motion.

Mr. Johnson agreed that the analysis was correct. MDT promptly got a modification to the removal permit when the second gasoline tank was found. The modification was well within required 30 day period for securing a removal permit

Mr. Boucher seconded the motion. **The motion was unanimously approved.**

Eligibility Ratification

Mr. Wadsworth informed the Board of the eligibility applications before the Board. He noted two changes to the eligibility table: Determination of eligibility for the Lucky's Auto site in Billings is postponed until a later Board meeting; and the Board just voted to grant eligibility to the Big Sky Wood Crafters site in Laurel. As a result of those changes four facilities are recommended eligible and one is recommended ineligible.

Mr. Peterson moved to ratify the eligibility determinations contained in the eligibility table, with modifications to the table noted above. Mr. Noble seconded. **The motion was unanimously approved.**

Board Staff Recommendations Pertaining to Eligibility From October 5, 2006 thru Nov 27, 2006				
Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Lewistown	On Your Way	14-09853	3790 Aug 1999	Ineligible – 10/5/06

Table continued . . .

Board Staff Recommendations Pertaining to Eligibility From October 5, 2006 thru Nov 27, 2006				
Missoula	Noon's 470	32-08863	4446 Oct 2005	Eligible – Insurance available - 10/19/06
Great Falls	Rapley Property	07-04772	4325 Nov 1999	Eligible – 11/2/06
Arlee	Riverside Bar and Grill	24-13755	4498 June 2006	Eligible – 11/2/06
Billings	Former Lucky's Auto Sales	60-15048	4499 7/20/06	Ineligible - 11/15/06. POSTPONED TO LATER MEETING
Laurel	Big Sky Wood Crafters	60-15045	4511 Sept 2006	Ineligible 11/15/06 – Found tanks. BOARD DETERMINED ELIGIBLE
Big Arm	Big Arm General Store	24-12285	4456 Nov 2005	Eligible - 11/27/06

Claims over \$25,000

Mr. Wadsworth presented the Board with the claims for an amount greater than \$25,000 reviewed since the last Board meeting. (See table below). There are two claims totaling \$69,775.58.

Mr. Cross noted that approximately \$300,000 has been spent at the site and asked if there are other claim issues at the site.

Mr. Wadsworth stated that there are two other claims in dispute with the owner that were scheduled for the October 2006 meeting. The owner had asked to postpone consideration of the dispute until he could look more closely at the details. The claims were for tank and structure removal that were not part of the approved corrective action plan.

Mr. Boucher moved to ratify the claims over \$25,000. Ms. Blazicevich seconded. **The motion was unanimously approved.**

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Reimbursed
Bozeman	Interstate 90 Exxon	16-08190	20061031B	\$46,657.60	\$46,657.60
Chinook	Andy's Exxon	3-06483	20060831A	\$49,494.90	\$23,117.98
					Co-payment met with this claim
Total					\$69,775.58

Weekly Reimbursements

Mr. Wadsworth presented to the Board for ratification the summary of weekly claim reimbursements for the weeks of October 11, 2006 through November 29, 2006. (See table below). There were 223 claims, totaling \$692,577.37. In addition, there were two claims that were denied in their entirety, for Flying J in Belgrade. The two denied claims will likely be disputed and appear on the next Board agenda.

Ms. Michels moved to ratify the weekly claim reimbursements. Mr. Michels seconded. **The motion was unanimously approved.**

<u>WEEKLY CLAIM REIMBURSEMENTS</u> December 11, 2006 BOARD MEETING		
<u>Week of</u>	<u>Number of Claims</u>	<u>Funds Reimbursed</u>
October 11, 2006	25	\$78,673.28
October 18, 2006	34	\$88,997.28
October 25, 2006	14	\$94,642.06
November 1, 2006	20	\$65,251.27

WEEKLY CLAIM REIMBURSEMENTS		
December 11, 2006 BOARD MEETING		
November 8, 2006	37	\$91,031.01
November 15, 2006	28	\$88,021.99
November 22, 2006	38	\$89,802.51
November 29, 2006	27	\$96,157.97
Total	223	\$692,577.37

Proposed 2007 Meeting Dates

Mr. Wadsworth presented the proposed meeting dates for Board meetings in calendar year 2007. The meetings are approximately eight weeks apart.

<u>Meeting Date</u>	<u>Pre- Meeting Date</u>	<u>Packet Mailing Date</u>
February 5, 2007*	January 8, 2007	January 25, 2007
April 2, 2007*	March 16, 2007	March 23, 2007
May 21, 2007	May 3, 2007	May 10, 2007
July 23, 2007	July 9, 2007	July 12, 2007
September 17, 2007	August 30, 2007	September 6, 2007
November 19, 2007	November 1, 2007	November 8, 2007

*The February and April meetings will be held in Room 112, Last Chance Gulch Building, 1100 Last Chance Gulch, Helena, MT. The remainder of the meetings will be held in Room 111, Metcalf Building, 1520 East 6th Avenue, Helena, MT

Mr. Peterson asked if there were budgeting issues coming up in 2007.

Mr. Wadsworth responded that there are not in 2007, but will be in 2008. He also noted that the staff meets with the department prior to the meeting to look at what is on the agenda and try to resolve any issues that can be resolved. The agenda for the Board meeting is finalized after that meeting. Anything to be added to the agenda should be received by the pre- meeting date.

Mr. Peterson moved to accept the proposed meeting dates. Mr. Noble seconded. **The motion was unanimously approved.**

Proposed Legislation

Mr. Wadsworth noted that several possible legislative proposals for the 2007 Legislature have been discussed at recent Board meetings. He indicated that Tom Livers, Deputy Director of DEQ, asked to address the Board.

Mr. Livers discussed Executive Branch legislation as it impacts Executive Branch agencies and the boards attached to those agencies. The agencies work through the Executive Planning Process to develop proposed legislation, floating basic concepts through the Executive Branch and the Governor's office in the spring. The proposals are evaluated and those that move forward are developed further by the proposing agency during the summer. Final decisions on which legislative proposals will be presented are made by the Governor's office during the fall. Appointed boards are part of the executive branch and once a board takes a position on recommended legislation, the agency takes that position to the Governor's office for consideration. He anticipated that the Department will be reluctant to support the Board's effort to increase the fee. The other potential legislative proposals are more acceptable to the Department. He feels that the Governor's office will also resist a fee increase. There are strong arguments for the increase, but perhaps other avenues can be used to achieve a balance. If the Board would like to carry the fee increase proposal to the Governor, rather than have the Department do so, that is an option.

Mr. Livers provided a copy of a memorandum from the Governor's office that offers some guidance to Executive Branch boards and commissions regarding the legislative process.

Ronna Alexander, Executive Director of the Montana Petroleum Marketers Association, noted the memorandum indicates that appointed boards must work through the executive branch to propose legislation, and asked whether the memorandum expressed a legal opinion. Mr. Livers replied that it is a legal direction from the Governor's office. Board

members are appointed to do a job, but there is some question as to whether that designation includes recommending and advocating for legislation. However, DEQ's chief legal counsel agrees with the Governor's office direction. Individual members may testify as individuals.

Paul Johnson, Board legal counsel, indicated that the Board has quite a bit of independent authority granted by the enabling statute. There are good reasons to coordinate with the Governor's office to develop legislation, but should the Board wish, he would research whether the board has independent authority to go forward with legislation absent approval of the Governor's office.

Presiding Officer Cross indicated the Board does not wish to pursue such research at this time.

Mr. Livers indicated that the Department will continue to work with the Board to balance the work flow with available fund resources.

Presiding Officer Cross stated, for the record, that all the members of the Board serve at the pleasure of the Governor and are there to do a job as directed by Governor Schweitzer. In addition, the Board's budget is a very small percentage of the State's entire budget.

Ms. Blazicevich indicated a fee increase would be easier to support if it were tied to some other feature that would make it a short term increase. She suggested creating a trust fund to address historical contamination, with an increase in the fee to provide the initial funding for the trust fund. Once the fund was established, the fee increase would be terminated. In addition, once the historical spills are cleaned up the trust fund would terminate. Perhaps if people knew their liability with old historical tanks and that they could get into the trust fund, get the contamination addressed and perhaps pay back into the fund with some of the increase in the value of their property, the owners would be willing to support an increase in the fee. The concept would be to provide seed money through a temporary fee increase.

Mr. Wadsworth reminded the Board of the four basic areas proposed for legislative changes. The first concerned a language change to §27-2-102, MCA suggested by the Board's outside legal counsel. Counsel has requested that the proposal be postponed until the 2009 legislative cycle, because there is a case before the State Supreme Court that may affect the proposal.

The second proposal concerns changing the reference to the word "immediately" in §75-11-309. This refers to the statutory requirement to immediately notify the department of a release.

The main focus of the proposed legislation is changes to §307 and §314. The amendments to §75-11-314 propose increasing the fee from three-quarters of a cent per gallon to one cent per gallon. The intent is to get the fund back on track with the consumer price index. The fee increase would increase revenues by approximately 25%, and allow the fund to address the volume of corrective action activity that has been requested by DEQ.

The modification to §75-11-307 would increase the co-pay required from the owners and operators. The current proposal for changing the co-pay is as follows: (1) 50% of the first \$35,000, 10% of the next \$65,000, and 5% of any costs over the \$65,000 up to \$1 million. The national average for petroleum storage tank cleanup is \$150,000, while the average cleanup cost in Montana is between \$150,000 and \$250,000. Other ideas for increasing the co-pay have been suggested since development of the current proposal. Mr. Wadsworth discussed these other proposals and how they relate to the Board's desire to have owners and operators seek reimbursement from their insurance company before applying to the Fund for assistance. He noted the staff has learned that some owners and operators have insurance that will cover cleanup, but will not pay for investigation of a release. Investigation is the first work completed on a site. In addition, insurance premium costs would likely increase for each additional occurrence, a factor that is not currently included in the Fund's model. While the majority of facilities currently have only one release, some facilities have more than one and some have many more than one. Since the Fund does not have premiums to increase, proposals were developed that increase the amount of the co-pay with each additional release.

Each proposal begins with the proposed change in the co-pay to the 50%-10%-5% schedule suggested in the current proposed legislation. One suggested option, related to the number of releases at a site, proposes doubling the amount of the co-pay for each additional release, so that on the second release the owner/operator would be responsible for 50% of the first \$70,000, 10% of the next \$130,000, and 5% of the remainder; on the third release the co-pay would again double, to 50% of the first \$140,000, 10% of the next \$260,000 and 5% of the remainder, and so on. With this proposal, if the owner/operator had six releases, they would be paying the first \$500,000 in costs on the sixth release.

A second option proposes a 1.5 multiplier for each additional release, rather than a multiplier of 2, as in the first scenario. In this instance, for the second release the owner/operator would pay 50% of the first \$52,500, 10% of the next \$97,500

and 5% of the remainder, and for the third release 50% of the first \$78,750, 10% of the next \$146,250, and 5% of the remainder, and so on.

In the final suggestion, the co-pay amount would simply be multiplied by the number of the additional release (i.e., release #1, #2, #3 at the site, and so on). Under this proposal, the owner would pay 50% of the first \$70,000, 10% of the next \$130,000 and 5% of the remainder for the second release. The owner would pay 50% of the first \$105,000, 10% of the next \$195,000, and 5% of the remainder on the third release, and so on for the number of releases at the facility.

These proposals similar to changing insurance premiums, where owners/operators are penalized for multiple releases, the co-pay remains fairly low for facilities with only one release, expenditures by the fund are reduced, and it assists in transitioning the fund from its current structure to an insurance-based system, as suggested by the Legislative Audit Division. In addition, the suggested proposal may encourage owners/operators to handle small releases on their own.

Frank Schumacher, Mountainview Co-op, addressed the Board concerning the encouragement for insurance. His concern is that there is not enough incentive for insurance contained in the currently proposed language. He presented the Board with some scenarios showing that the incentive to purchase insurance decreases as the cost of cleanup increases. With the average cost of cleanup in Montana ranging between \$150,000 and \$250,000, the proposals may not be an incentive to purchase insurance. He suggested that the Board consider that any insurance money attributed to the cleanup could result in waiver of the Board's co-pay up to the amount of insurance coverage. His example suggested insurance coverage of \$100,000 with a \$5,000 deductible on a cleanup costing \$150,000. The first \$100,000 of cleanup costs, paid by the insurance company, would be applied to the 50% and 10% co-pay components of the current co-pay proposal, meaning that the owner/operator would pay 5% of the remaining \$50,000 of cleanup costs. The scenarios presented do not include the cost of premiums.

Mr. Peterson asked what the industry thought of the proposal.

Ms. Alexander, Petroleum Marketers Association, stated that the industry would not have a problem increasing the burden on itself, in the form of larger co-payments, if there was some assurance that the administrative costs of the Board's budget would be reduced. The industry has not seen any movement in that direction from the Board or DEQ. She indicated that there are several issues the marketers would like to see addressed, among them being how claims are paid and how work plans are addressed. She indicated the industry would like to know exactly how sites are prioritized, and what DEQ is doing to meet the industry in the middle on cost control issues. The marketers would probably not support the bill as currently written.

Mr. Buck Pandis, President of the Petroleum Marketers Association, addressed the Board. He noted that on March 21, 2005 the Board voted to direct the staff and DEQ to decrease the administrative budget of the DEQ by 5% per year or 10% per biennium until administrative expenses of the DEQ equal 15% of the total budget. The budget currently proposed is 5% more, not 5% less. The Marketers cannot support an increase under those circumstances.

Ms. Blazicevich suggested that the legislation be modified to provide that the fee increase and co-pay increase for 2 years, so long as the Board pursues efforts to find a way to deal with historical releases, find a way the department can reduce administrative costs, have the industry pursue alternative insurance and have the industry pursue ways to control spills and overfills. Perhaps these could be added to the legislation for the next two years. We want them addressed in that two year period. Or drop everything and study these four issues.

Mr. Peterson indicated that the Board did request the administrative budget be decreased, as Mr. Pandis indicated, and it did not occur. When the Board weighs in on the budget, as it is required to do, those requests need to be addressed. He would like the Department to address what the Board requested when it appears before the Legislature.

Ms. Olsen stated that the Department would certainly share the Board's concerns when the budget is presented to the subcommittee.

Mr. Livers asked to have clarification of what is being asked.

Mr. Peterson stated that he wants DEQ to make it transparent to the budget appropriations committee that the Board had asked for a 5% decrease per year in the budget and the budget as submitted did not reflect that request.

Mr. Wadsworth asked what the Board wants done with its proposed legislation. He stated that if there is no legislative change, and the work flow and work load cannot be controlled, and administrative costs cannot be cut, then the Board must either borrow money or not pay claims. If claims are not paid the consultants are not happy and neither are the owner/operators.

There was extensive discussion between the members of the Board, Mr. Wadsworth, DEQ and the Petroleum Marketers Association concerning the current legislative proposal, possible alternative suggestions and the willingness of the Department or the Marketers to support proposed legislation, the budget, as submitted by DEQ to the Legislature, the Board's frustration with the Department's lack of response to its request for a reduction in budgeted administrative costs, the financial status of the fund, and the ability of the Fund to pay claims that will likely be received given the volume of work requested, as seen in the work plans reviewed.

Ms. Olsen stated that DEQ is also frustrated with the situation. Some time ago the Board asked that DEQ to streamline process to reduce costs, which has been done; however, as a result they are processing more sites and more claims are coming in. The Department can downsize the program and cut FTEs, which will result in lower claims payouts, but that will result in slower and more infrequent cleanups. Is that the direction the Board wants to move?

Ms. Blazicevich suggested that the Board move forward with legislation concerning §314 that would include an increase in the fee to one cent per gallon that begins July 1, 2007 and sunsets June 30, 2009. The legislation should include a clause that specifies that from July 1, 2007 to June 30, 2009 DEQ's costs from fund must be reduced to less than 15% of the budget, and that the industry will pursue alternative insurance for coverage of releases and ways to prevent spills and overfills, and that the DEQ will address setting up a trust fund or sunset clause for coverage of historical releases that predate establishment of the fund. This proposal would leave the co-pay proposal as it stands in the current draft legislation. The ultimate goal is that the Marketers would work to develop other legislation for the 2009 legislature to take care of any difficulties.

Mr. Boucher moved to drop §27-2-102 from the Board's proposed legislation. Ms. Blazicevich seconded. **The motion was unanimously approved.**

Mr. Johnson noted that the Board could move to authorize the proposals that Ms. Blazicevich outlined in concept, and to develop that position into a more specific legislative proposal.

Ms. Blazicevich proposed that the Board go forward with the language and the remainder of what was proposed for a fee increase and the proposal in §309 and 307 with the exception of the fee increase is only for 2 years and that during that 2 year period from July 1, 2007 to June 30, 2009 the Department reduce the budget to less than 15% of the total budget revenue and that the industry study alternate insurance and ways to prevent spills and overfills and that DEQ, the industry and the Board pursue a trust fund or some such mechanism for historical spills. Mr. Peterson seconded. **The motion was unanimously approved.**

Fiscal Report

Mr. Wadsworth noted that the fiscal year begins on July 1 and that the report covers roughly one-third of the fiscal year. Through the end of October the Board has received revenues of \$1.97 million in MDT fees or one-third of the budgeted \$5.7 million. Since the Board receives two months of revenue in the last month of the fiscal year, revenues may exceed the budgeted amount. Claims payments total approximately \$1.7 million and are about 38% of the budgeted amount of \$4.4 million. Expenditures exceed revenues by approximately \$243,000, most of it in claims payments. The staff is attempting to curb the expenditures by extending time to reimbursement. At one point claims were paid within seven days, now it is just over thirty days. However, expenses are still exceeding revenue.

Mr. Peterson recalled that either the department or the staff was going to provide a plan to balance the budget by prioritizing claims and asked if his recollection was accurate. Mr. Wadsworth restated Mr. Peterson's question for clarity, as follows: Mr. Peterson asked the department to assure the Board that it will meet the objective originally requested in a motion taken by the Board to reduce the budget over the 2008-2009 biennium.

Mr. Peterson indicated that he wanted assurance that the Board will not be running a budget that anticipates deficit spending.

Mr. Cross noted his recollection that the Board staff proposed the department prioritize sites, and by doing so postpone some work plans on lower priority sites. The combination of postponing expensive action on lower priority sites and trying to cut the administrative costs by five percent will achieve a balanced budget.

Sandi Olsen, Remediation Division Administrator, addressed the Board. She noted that the minutes for the October meeting enumerate the factors considered in the department's site priority evaluation. The factors that are top priority at all times are:

1. Significant impact to human health or the environment – If the contamination in drinking water is above DEQ-7 levels, it must be worked on. DEQ-7 levels are derived from the federal Water Quality Act.
2. If surface water is impacted above DEQ-7 levels.
3. If the release creates subsurface vapors that creep into structures above acceptable levels.
4. Soils impacted that have a connection to drinking water or public water supply lines.
5. Contamination that impacts a sensitive environment or an endangered species.

There are approximately 300 sites on which the department is not currently working. They are re-evaluating the sites they are working on to see if priorities need to be adjusted. She noted that DEQ is anticipating a \$250,000 balance in its portion of the Board's budget at the end of the current fiscal year. She also noted that personal services are rising almost as much as the Board is asking the Department to reduce their spending. She stated that information on the prioritization process, including the priority ranking sheet, is available on the Department's website (Technical Guidance Document #15 Prioritization of Petroleum Release Sites) and that sites are scored on many factors. Those with a score of 50 to 100 are high priority sites, between 30 and 50 are medium priority, and those under 30 are low priority sites. Making a site a low priority site often delays closure. The Board also wants to see sites taken to closure. She offered to bring a detailed description of prioritization to the next meeting, and to check the website to be sure the priority ranking sheet is there.

Mr. Peterson expressed appreciation that the Department's portion of the budget is anticipated to be in the black by \$250,000, however, that will not be enough to balance the Board's budget. The Board is deficit spending and claims must be prioritized or the Board will run out of money. The Board is not interested in borrowing. He also recalled that updated revenue projections were supposed to be available at this meeting. While the environment needs to be cleaned, there is a finite amount of money available, and realistic decisions must be made.

Mr. Wadsworth indicated that MDT has not provided any written confirmation that fuel revenues were higher than had been projected. He reminded the Board that diesel use is rising, while gasoline and aviation fuel use are constant. This may result in an increase in MDT revenue, rather than the projected decrease, but no confirmation of that has been received. Mr. Wadsworth reiterated Mr. Peterson's statement that the department needs to be working on sites of the correct priority in order to balance claim activity.

Mr. Peterson noted that the department has not come forward with a plan to spend less on claims and help the Board meet its budget, and asked Mr. Wadsworth to help encourage the department to present such a plan at a future meeting.

Ms. Olsen pointed out that if MDT revenues increase, as has been suggested might occur, she expects the Board will end up with a surplus even without any subrogation settlements.

Mr. Wadsworth pointed out that in addition to the projected decrease in MDT revenue receipts there is a significant projected decrease in claim payments. If the claims come in at a higher amount, any surplus revenue will be quickly depleted. The Board is currently paying claims that are at least thirty days old. If claim payments were paid a week out, as has recently been the case, there would be a larger deficit in the projected budget than is currently projected.

Presiding Officer Cross noted that the work plan activity currently approved is approximately \$2.5 million, and it is claim payments that are causing the greatest portion of the budget deficit. With the limited money available to Board, **something must be done to adjust priorities and work plan requests** so that sites that are not an imminent hazard are not monitored constantly with little effect.

Mr. Wadsworth drew the Board's attention to the fact that there have been several significant spikes in work plan approval activity in the past twelve months. If those work plans manifest as claims in this fiscal year, the Board's financial situation will be difficult.

Ms. Blazicevich noted that when she worked for the tank program several years ago there was talk of creating a trust fund to handle historical spill sites. If such sites were placed in a separate program, they could be addressed as money becomes available. This does not necessarily address the DEQ's priority, but if contamination has been present for an extended period of time and the plume is not increasing, it should be low priority. The number one cause of releases for the past year has been historical spills, old "found" tanks. One proposal for limiting the Board's liability for such sites is to stipulate that tanks discovered after a certain date will no longer be covered by the Fund. The next priority is spills and overfills. There must be a way to eliminate accidental spills.

Presiding Officer Cross asked that she send any proposals to him. He asked Mr. Johnson to evaluate whether the Board can make rules to effectuate such proposals without legislation.

Board Attorney Report

Paul Johnson told the Board that Town Pump filed and served their reply brief in the Town Pump Dillon case on December 8, 2006. Town Pump is still relying on the argument that the statutes and rules in effect at the time of application for eligibility should apply, rather than the statutes and rules in effect at the time the release was discovered. The case will be set for oral argument.

Mr. Johnson has recently contacted the attorney in the Castner case and suggested a stipulated dismissal of the case with prejudice. The request is based on new evidence that ratifies the Board's decision to deny eligibility. The new evidence is that there was a one month delay between the time the release was discovered and the time DEQ was notified. He suggested that if Ms. Castner is not willing to stipulate to dismissal, the stay on the case be lifted and it be allowed to move forward to a conclusion.

Mr. Wadsworth noted that, in the Castner case, it appears the release has been resolved and the insurance company was paying to clean up the release.

With regard to the Allen Oil case, Michael Allen is no longer the owner of the bulk plant, though the status of ownership is currently unclear. It may be that the contested case proceeding can be dismissed with prejudice. He will report again at the next Board meeting.

Presiding Officer Cross noted that the ASTs at bulk plants represent a huge potential liability to the fund. The subrogation program must include this type of a claim. He asked that Mr. Johnson keep these types of plants in mind when dealing with the subrogation program, either through the Doney law firm or Agency Legal Services. Allen acquired the property from Union 76 and nothing was done to clean it up. It would be a horrible misuse of the Fund to try to clean it up.

Mr. Wadsworth added that the owner of Stacey Oil has not yet appointed an attorney in that contested case hearing.

Board Staff Report

Mr. Wadsworth noted that there are a few eligibility applications filed in 2005 that have not yet been resolved. One is Mary Hightower, one is Avon General Mercantile and they continue to await determination. Many of the 2006 eligibilities that are pending were addressed by the Board's action earlier in the meeting.

Mr. Wadsworth stated that it appears the Board will receive over 200 more claims in 2006 than it did in 2005.

Presiding Officer Cross noted that there was a discussion of reimbursement for single-walled versus double-walled systems. However, the type of system does not appear to be relevant to the claims coming in. Most of the Mom and Pop operations have been weeded out and the equipment being used is state of the art.

Mr. Wadsworth stated that the question remains whether the claims are related to new releases or historical contamination. He stated that another question is how to prioritize between the two types of releases, knowing that historical contamination is not likely a threat to human health and the environment.

Ms. Blazicevich suggested creating a system similar to workers compensation, where there is an old fund and a new fund. Historical contamination would be cleaned up from the old fund and the new fund should address new spills and overfills, and have minimal releases. Discussions could be held with the oil companies to encourage them to fund some of the liabilities for historical release.

Moving on with the Board Staff report, Mr. Wadsworth pointed out the table showing facilities that currently have enforcement orders against them. These orders, once satisfied, may result in adjustment of the reimbursement percentage at each site and the owner/operator may appeal the adjustment.

PTRCB ELIGIBLE FACILITIES THAT HAVE SUSPENDED CLAIMS DUE TO ENFORCEMENT ORDER						
As of November 27, 2006						
FID	City	Facility Number	Site Name	Order Date	Suspension Letter Date	Order Resolved Date
643	Dillon	01-05401	Dietrichs College Exxon	10/25/05	8/8/06	
984	Kalispell	15-09820	Mulligan's Conoco	10/14/05	8/22/06	

PTRCB ELIGIBLE FACILITIES THAT HAVE SUSPENDED CLAIMS DUE TO ENFORCEMENT ORDER						
As of November 27, 2006						
FID	City	Facility Number	Site Name	Order Date	Suspension Letter Date	Order Resolved Date
1004	Laurel	56-05083	Kwik Way 15	2/1/06	5/17/06	
1086	Belgrade	16-05753	Flying J Belgrade	4/3/06	5/17/06	11/13/06
1090	Havre	21-07467	Milk River CO-OP	3/16/06	5/17/06	9/25/06
1099	Reedpoint	48-01521	Reedpoint Sinclair	5/1/06	5/11/06	
1101	Townsend	04-07127	Pop Inn – City of Townsend	5/10/06	9/13/06	
1104	Choteau	50-09285	Choteau Airport	5/8/06	5/8/06	
1105	Billings	56-05491	Dons Car Wash Grand Ave	6/12/06	6/12/06	
1106	Miles City	09-00624	Conoco Quik Stop Inc	7/3/06	7/3/06	
1113	Laurel	56-01069	Johns Laurel Service Center	7/3/06	7/3/06	9/12/06
1116	Great Falls	07-09699	On Your Way	9/6/06	9/11/06	
1118	Missoula	32-01356	Frontier Gas and Grocery	10/25/06	10/30/06	
1119	Glasgow	53-03160	Markle's Exxon	8/23/06	8/24/06	
1123	Hysham	52-01905	Farmers Union Oil	9/1/06	9/6/06	
1128	Hot Springs	45-04109	Spring Street Exxon	9/6/06	9/11/06	
1129	Helena	25-07404	Bobs Valley Service Inc	9/15/06	9/18/06	
	Ryegate	19-05338	Ryegate Conoco	Violation letter 8/403	8/4/03* DEQ letter	

Petroleum Release Section Report

Mr. Trombetta told the Board that there have been 40 releases discovered in calendar year 2006. If the trend continues, the Department is expecting to have approximately 50 releases during the year. 58% of the releases are from unknown historical sources such as found tanks or contamination unrelated to existing tanks.

During its last meeting, the Board asked how many sites with expenditures near \$300,000 are close to closure. Mr. Trombetta provided a summary table showing the current status of Board sites with expenditures between \$250,000 and \$350,000. The table shows that of the 39 sites reviewed, a few sites are close to closure, a few others are transitioning to long-term monitoring, but the majority of them are in the cleanup phase or groundwater monitoring stage.

Mr. Trombetta provided a brief summary of the Westgate Exxon site in Great Falls, as was requested by the Board at its previous meeting. The site was over-excavated, with approximately 1,630 cubic yards of contaminated soil were excavated and disposed. A small amount of contaminated soil was left in place, as it was beneath the adjacent roadway and could not be excavated safely. Monitoring wells were installed within the excavated area. The benzene level dropped to 25 parts per billion (ppb) from a pre-excavation level of 5,900 ppb. The benzene level remains above the Risk Based Screening Level, but is expected to show an accelerated natural attenuation rate now that the contaminated source has been removed. The site will be evaluated for closure once the contamination levels fall below RBSLs.

Presiding Officer Cross asked how long the Westgate site had been a leak site. Mr. Trombetta replied that it is not a fresh release, but has been inactive for some time while DEQ tried to identify the responsible party. He also indicated that just because it is an old site does not mean it is low priority. There was a large mass of contaminated soil that could cause contamination of nearby buildings or water supply lines.

Mr. Frank Schumacher addressed the Board and indicated that the site came before the Board for eligibility when he was a member. It was a site with an historical spill that needed to be excavated to effectuate cleanup, and he helped craft the language that encouraged a dig-out at the site.

Presiding Officer Cross reiterated his belief that excavating contamination, while expensive, is likely the most cost effective cleanup method in the long run. Monitoring a site for an extended time before cleanup is not useful.

Mr. Trombetta stated it is the Department's procedure to dig out the sites where that can be done, but investigation monitoring must be done to determine what needs to be excavated. After the cleanup is completed there will be quarterly monitoring for a year, then semi-annually at high and low water level for a period, then if the results warrant it, move to annual monitoring, then monitoring every three years. Monitoring must be conducted at least every three years due to DNRC regulations, or the well must be removed.

Proposed Contract Change – Doney Contract - Subrogation Activity

Mr. Wadsworth informed the Board that the proposed modification to the Doney legal contract is under review by the Legal Review Committee. The modification will increase the hours available under the contract by 500 hours. Mr. Wadsworth suggested the Board entertain a motion to authorize the Presiding Officer to execute the modification if there are no significant revisions from the legal review.

Mr. Peterson moved to give authority to the Presiding Officer to execute the contract modification without further meeting of the Board. Mr. Michels seconded. **The motion was unanimously approved.**

Public Forum

The next scheduled Board meeting is February 5, 2006, in **Room 112 of the Last Chance Gulch Building, 1100 Last Chance Gulch**, Helena, MT.

Meeting adjourned at 12:52 p.m.

Greg Cross - Presiding Officer